

HOUSE BILL No. 1338

DIGEST OF INTRODUCED BILL

Citations Affected: IC 31-9-2-46.7; IC 31-34; IC 31-37-19-1.7.

Synopsis: Child representatives, foster care, and parenting time. Allows a court to remove a child representative if the: (1) department of child services; or (2) probation officer; demonstrates good cause that the child representative would not act or has not acted in the best interests of the child. Allows certain individuals who are at least 18 years of age to opt out of foster care. Prohibits a court from modifying a previous parenting time order for a parent, guardian, or custodian who is not a part of the allegation of abuse or neglect.

Effective: July 1, 2016.

Harman

January 12, 2016, read first time and referred to Committee on Judiciary.



Second Regular Session of the 119th General Assembly (2016)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2015 Regular Session of the General Assembly.

HOUSE BILL No. 1338

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 31-9-2-46.7, AS AMENDED BY THE
2 TECHNICAL CORRECTIONS BILL OF THE 2016 GENERAL
3 ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2016]: Sec. 46.7. "Foster care", for purposes of IC 31-25,
5 IC 31-26, IC 31-27, IC 31-28-1, IC 31-28-2, IC 31-28-3, ~~IC 31-34-21-7,~~
6 IC 31-34-21-7.6, **IC 31-34-23**, and IC 31-37-22-10, means living in:
7 (1) a place licensed under IC 31-27 or a comparable law of
8 another state; or
9 (2) the home of an adult relative who is not licensed as a foster
10 family home.
11 SECTION 2. IC 31-34-5-3, AS AMENDED BY P.L.146-2008,
12 SECTION 580, IS AMENDED TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2016]: Sec. 3. (a) The juvenile court shall
14 release the child to the child's parent, guardian, or custodian. However,
15 the court may order the child detained if the court makes written
16 findings of fact upon the record of probable cause to believe that the
17 child is a child in need of services and that:



- (1) detention is necessary to protect the child;
- (2) the child is unlikely to appear before the juvenile court for subsequent proceedings;
- (3) the child has a reasonable basis for requesting that the child not be released;
- (4) the parent, guardian, or custodian:
 - (A) cannot be located; or
 - (B) is unable or unwilling to take custody of the child; or
- (5) consideration for the safety of the child precludes the use of family services to prevent removal of the child.

(b) The juvenile court shall include in any order approving or requiring detention of a child all findings and conclusions required under:

- (1) applicable provisions of Title IV-E of the federal Social Security Act (42 U.S.C. 670 et seq.); or
- (2) any applicable federal regulation, including 45 CFR 1356.21; as a condition of eligibility of a child in need of services for assistance under Title IV-E or any other federal law.

(c) Inclusion in a juvenile court order of language approved and recommended by the judicial conference of Indiana, in relation to:

- (1) removal from the child's home; or
- (2) detention;

of a child who is alleged to be, or adjudicated as, a child in need of services constitutes compliance with subsection (b).

(d) If a child taken into custody under this article:

- (1) was removed from the home of a parent, guardian, or custodian;**
- (2) is the subject of a previous court order that granted parenting time to a parent, guardian, or custodian who:**
 - (A) does not reside in the home from which the child was removed; and**
 - (B) was not a part of the allegation of abuse or neglect that resulted in removal of the child; and**
- (3) is detained as described in subsection (a);**

the parenting time of the parent, guardian, or custodian described in subdivision (2) shall continue as previously ordered.

SECTION 3. IC 31-34-15-7, AS ADDED BY P.L.104-2015, SECTION 38, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) For a child who is at least fourteen (14) years of age, the department shall consult with the child in the development of the child's case plan or transitional services plan. If the department determines that the child is unable to participate effectively



in the development of a case plan or transitional services plan due to a physical, mental, emotional, or intellectual disability, the department may excuse the child from this requirement by documenting in the plan the reasons for the child's inability to participate in the development of the applicable plan. If the child refuses to participate in the development of the applicable plan for reasons other than a physical, mental, emotional, or intellectual disability, the department shall record the refusal and document efforts made to obtain the child's input or participation in the development of the applicable plan.

(b) The child may select not more than two (2) child representatives to represent the child in the development of the child's case plan or transitional services plan. A child representative selected under this section:

(1) must be:

(A) at least eighteen (18) years of age; and

(B) a member of the case planning team; and

(2) may not be a foster parent of or caseworker for the child.

(c) The child may select one (1) of the child representatives who is a member of the child's case planning team to also be the child's adviser and, as necessary, advocate, with respect to the application of the reasonable and prudent parent standard to the child.

(d) The department may ~~reject~~ **object to** an individual selected by a child to be a ~~member of the case planning team at any time~~ if the department has good cause to believe that the individual would not act in the best interests of the child: **child representative.**

(e) If the department objects to a child representative under subsection (d), the department shall:

(1) file the objection with the court that found the child to be a child in need of services; and

(2) state why the department believes the child representative would not act or has not acted in the best interests of the child.

(f) If the court determines that the department has demonstrated good cause regarding the objection filed under subsection (e), the court shall set a hearing with the department and the child to consider the objection.

(g) After a hearing described in subsection (f), the court may order the removal of a child representative if the court determines the department has established there is good cause to remove the child representative.

SECTION 4. IC 31-34-20-1, AS AMENDED BY P.L.104-2015, SECTION 39, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1. (a) Subject to this section and section 1.5 of this



chapter, if a child is a child in need of services, the juvenile court may enter one (1) or more of the following dispositional decrees:

- (1) Order supervision of the child by the department.
- (2) Order the child to receive outpatient treatment:
 - (A) at a social service agency or a psychological, a psychiatric, a medical, or an educational facility; or
 - (B) from an individual practitioner.
- (3) Remove the child from the child's home and authorize the department to place the child in another home, shelter care facility, child caring institution, group home, or secure private facility. Placement under this subdivision includes authorization to control and discipline the child.
- (4) Award wardship of the child to the department for supervision, care, and placement.
- (5) Partially or completely emancipate the child under section 6 of this chapter.
- (6) Order the child's parent, guardian, or custodian to complete services recommended by the department and approved by the court under IC 31-34-16, IC 31-34-18, and IC 31-34-19.
- (7) Order a person who is a party to refrain from direct or indirect contact with the child.
- (8) Order a perpetrator of child abuse or neglect to refrain from returning to the child's residence.

(b) A juvenile court may not place a child in a home or facility that is located outside Indiana unless:

- (1) the placement is recommended or approved by the director of the department or the director's designee; or
- (2) the juvenile court makes written findings based on clear and convincing evidence that:
 - (A) the out-of-state placement is appropriate because there is not a comparable facility with adequate services located in Indiana; or
 - (B) the location of the home or facility is within a distance not greater than fifty (50) miles from the county of residence of the child.

(c) If a dispositional decree under this section:

- (1) orders or approves removal of a child from the child's home or awards wardship of the child to the department; and
- (2) is the first juvenile court order in the child in need of services proceeding that authorizes or approves removal of the child from the child's parent, guardian, or custodian;

the juvenile court shall include in the decree the appropriate findings



and conclusions described in IC 31-34-5-3(b) and IC 31-34-5-3(c).

(d) If:

(1) a dispositional decree under this section orders or approves removal of a child from the child's home or awards wardship of the child to the department; and

(2) the child is the subject of a previous court order that granted parenting time to a parent, guardian, or custodian who:

(A) does not reside in the home from which the child was removed; and

(B) was not a part of the allegation of abuse or neglect that resulted in an adjudication of the child as a child in need of services;

the parenting time of the parent, guardian, or custodian described in subdivision (2) shall continue as previously ordered.

SECTION 5. IC 31-34-21-7, AS AMENDED BY P.L.104-2015, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 7. (a) The court shall hold a permanency hearing:

(1) not more than thirty (30) days after a court finds that reasonable efforts to reunify or preserve a child's family are not required as described in section 5.6 of this chapter;

(2) every twelve (12) months after:

(A) the date of the original dispositional decree; or

(B) a child in need of services was removed from the child's parent, guardian, or custodian;

whichever comes first; or

(3) more often if ordered by the juvenile court.

(b) The court shall:

(1) make the determination and findings required by section 5 of this chapter;

(2) consider the question of continued jurisdiction and whether the dispositional decree should be modified;

(3) consider recommendations of persons listed under section 4 of this chapter, before approving a permanency plan under subdivision (5);

(4) consult with the child in person, or through an interview with or written statement or report submitted by:

(A) a guardian ad litem or court appointed special advocate for the child;

(B) a case manager; or

(C) the person with whom the child is living and who has primary responsibility for the care and supervision of the



- 1 child;
- 2 in an age appropriate manner as determined by the court,
- 3 regarding the proposed permanency plan;
- 4 (5) consider and approve a permanency plan for the child that
- 5 complies with the requirements set forth in section 7.5 of this
- 6 chapter;
- 7 (6) determine whether an existing permanency plan must be
- 8 modified; and
- 9 (7) examine procedural safeguards used by the department to
- 10 protect parental rights.
- 11 **(c) The court may consider the following factors in carrying out**
- 12 **the court's duties described in subsection (b):**
- 13 **(1) The age and sex of the child.**
- 14 **(2) The wishes of the child, with more consideration given to**
- 15 **the child's wishes if the child is at least fourteen (14) years of**
- 16 **age.**
- 17 **(3) The interaction and interrelationship of the child with:**
- 18 **(A) the child's parent or parents;**
- 19 **(B) the child's sibling; and**
- 20 **(C) any other person who may significantly affect the**
- 21 **child's best interests.**
- 22 **(4) The child's adjustment to the child's:**
- 23 **(A) home or placement;**
- 24 **(B) school; and**
- 25 **(C) community.**
- 26 **(5) The mental and physical health of all individuals involved.**
- 27 **(d) If the child is at least sixteen (16) years of age and the**
- 28 **proposed permanency plan provides for another planned permanent**
- 29 **living arrangement, the court shall, at each permanency hearing, do all**
- 30 **the following:**
- 31 **(1) Require the department to provide notice of the permanency**
- 32 **hearing to the child, in accordance with section 4(a) of this**
- 33 **chapter.**
- 34 **(2) Provide to the child an opportunity to be heard and to make**
- 35 **recommendations to the court, in accordance with section ~~4(d)~~**
- 36 **4(e) of this chapter.**
- 37 **(3) Require the department to document or provide testimony**
- 38 **regarding the intensive, ongoing, and, as of the date of the**
- 39 **hearing, unsuccessful efforts made by the department to return the**
- 40 **child home or secure a placement for the child with a fit and**
- 41 **willing relative, legal guardian, or adoptive parent, including**
- 42 **efforts through the use of search technology, such as social media,**



to find biological or adoptive family members for the child.

(4) Ask the child about the desired permanency outcome for the child and document the child's response.

(5) Make a judicial determination explaining why, as of the date of the hearing, another planned permanent living arrangement is the best permanency plan for the child and provide compelling reasons why it continues to not be in the best interests of the child to:

(A) return home;

(B) be placed for adoption;

(C) be placed with a legal guardian; or

(D) be placed with a fit and willing relative.

(6) Require the department to document or provide testimony regarding the steps the department is taking to ensure that:

(A) the child's foster family home, group home, secure private facility, or child caring institution is following the reasonable and prudent parent standard; and

(B) the child has regular, ongoing opportunities to engage in age or developmentally appropriate activities, including consulting with the child in an age appropriate manner about the opportunities for the child to participate in the activities.

(d) (e) There is a rebuttable presumption that jurisdiction over the child in a child in need of services proceeding continues for not longer than twelve (12) months after the date of the original dispositional decree or twelve (12) months after the child in need of services was removed from the child's parent, guardian, or custodian, whichever occurs first. The state may rebut the presumption and show that jurisdiction should continue by proving that the objectives of the dispositional decree have not been accomplished, that a continuation of the decree with or without any modifications is necessary, and that it is in the child's best interests for the court to maintain its jurisdiction over the child. If the department does not sustain its burden for continued jurisdiction, the court shall:

(1) direct the department to establish a permanency plan within thirty (30) days; or

(2) discharge the child and the child's parent, guardian, or custodian.

The court may retain jurisdiction to the extent necessary to carry out any orders under subdivision (1).

SECTION 6. IC 31-34-23-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: **Sec. 1.5. A dispositional decree issued**



by the juvenile court in a case pending under IC 31-34 shall be modified if:

- (1) the child reaches eighteen (18) years of age; and
- (2) the child is receiving foster care while subject to the wardship of, or court ordered supervision by, the department; to permit the child to opt out of foster care placement.

SECTION 7. IC 31-37-19-1.7, AS ADDED BY P.L.187-2015, SECTION 29, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 1.7. (a) For a child who is at least fourteen (14) years of age, the probation officer shall consult with the child in the development of the child's case plan or transitional services plan. If the probation officer determines that the child is unable to participate effectively in the development of a case plan or transitional services plan due to a physical, mental, emotional, or intellectual disability, the probation officer may excuse the child from this requirement by documenting in the plan the reasons for the child's inability to participate in the development of the applicable plan. If the child refuses to participate in the development of the applicable plan for reasons other than a physical, mental, emotional, or intellectual disability, the probation officer shall record the refusal and document efforts made to obtain the child's input or participation in the development of the applicable plan.

(b) The child may select not more than two (2) child representatives to represent the child in the development of the child's case plan or transitional services plan. A child representative selected under this section:

(1) must be:

- (A) at least eighteen (18) years of age; and
- (B) a member of the case planning team;

(2) may not be a foster parent of or caseworker for the child; and

(3) must be approved by the child's probation officer.

(c) The child may select one (1) of the child representatives who is a member of the child's case planning team to also be the child's adviser and, as necessary, advocate, with respect to the application of the reasonable and prudent parent standard to the child.

(d) The probation officer may ~~reject~~ **object to** an individual selected by a child to be a ~~member of the case planning team at any time if the probation officer has good cause to believe that the individual would not act in the best interests of the child:~~ **child representative.**

(e) **If the probation officer objects to a child representative under subsection (d), the probation officer shall:**

- (1) file the objection with the court that found the child to be



1 a delinquent child; and

2 (2) state why the probation officer believes the child
3 representative would not act or has not acted in the best
4 interests of the child.

5 (f) If the court determines that the probation officer has
6 demonstrated good cause regarding the objection filed under
7 subsection (e), the court shall set a hearing with the probation
8 officer and the child to consider the objection.

9 (g) After a hearing described in subsection (f), the court may
10 order the removal of a child representative if the court determines
11 the probation officer has established there is good cause to remove
12 the child representative.

